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Supreme Court, U.S.
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NO. 93-853

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

MARGARET S. ROWLAND,
PETITIONER

V.

ROBERT E. KINGMAN,
RESPONDENT

---

On Petition for Writ of Certiorari
to the Supreme Court of Maine

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# APPENDIX OF RESPONDENT

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COUNSEL FOR RESPONDENT
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37 pp

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STATE OF MAINE
CUMBERLAND, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Law Docket No. Cum-92-525

MARGARET S. ROWLAND

vs.

ROBERT E. KINGMAN

ORDER

Upon motion of appellee to vacate this Court's Order of March 4, 1993, and for other relief,

It is ORDERED that the motion be, and it hereby is, GRANTED in part. The time within which the appellee must file his brief is hereby enlarged to April 15, 1993. Appellee may file a reply brief on or before April 22, 1993. Oral argument will be scheduled for May 13, 1993.

The affidavits filed in support of appellant's motion for expedited appeal are

not part of the record on appeal as defined by M.R. Civ. P. 74(a).

In all other respects, appellee's motion is hereby DENIED.

Dated: March 12, 1993

For the Court,

/s/ David G. Roberts
Associate Justice

STATE OF MAINE
CUMBERLAND, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Law Docket No. Cum-92-525

MARGARET S. ROWLAND

vs.

ROBERT E. KINGMAN

ORDER

Upon motion of appellant for leave to supplement the record,

It is ORDERED that the motion be, and it hereby is, DENIED.

Dated: March 18, 1993

For the Court,

/s/ David G. Roberts
Associate Justice

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Department of Domestic Relations

| | |
|---|---|
| In the Matter of the Marriage of<br><br>MARGARET S. ROWLAND,<br><br>Petitioner,<br><br>and<br><br>ROBERT E. KINGMAN,<br><br>Respondent. | No. 9208-66808<br><br>TEMPORARY PROTECTIVE ORDER OF RESTRAINT |

THIS PROTECTIVE ORDER AFFECTS THE FOLLOWING CHILDREN:

| Full Names | Dates of Birth | Residence Address |
|---|---|---|
| Edwin R. Kingman | January 13, 1983 | 7 Scarborough Drive Lake Oswego, OR 97035 |
| Meagan R. Kingman | April 17, 1985 | 7 Scarborough Drive Lake Oswego, OR 97035 |

UNTIL CUSTODY OR VISITATION IS DETERMINED BY MEDIATION OR UNTIL FURTHER ORDER OF

THE COURT, each parent is restrained and enjoined from interfering with the children's usual place of residence, from interfering with the present placement and daily schedule of the children, from hiding or secreting the children from either parent, from interfering with each parent's usual contact and visitation with the children, from leaving the State of Oregon with the children without the written permission of the other parent or the permission of the Court, or from in any manner disturbing the current schedule and daily routine of the children.

DATED this 27 day of August, 1992.

/s/ Kathleen B. Nacktegill
CIRCUIT COURT JUDGE

SEAL CERTIFIED TO BE A TRUE COPY
OF THE ORIGINAL

Dated 8/27/92

NOTICE TO PARENTS MAKING THIS MOTION: The Court also requires you to GIVE NOTICE TO THE OTHER PARENT. See back for details.)

NOTICE

Do not sign until you are in the presence of a Notary Public.)

PERSONAL NOTICE (the Mother, or the Father, or any other adult may give the copy to the other parent, and should then complete the section below.)

I, _____, hereby swear that I gave an exact and true copy of this Temporary Protective Order of Restraint to the other parent, _____, who is the (mother)(father), by personally handing it to her/him.

DATE GIVEN TO OTHER PARENT: _____

Signed: _____
(Sign only before a Notary Public)

MAIL NOTICE (the Mother, or the Father, or any other adult may mail the copy to the other parent, and should then complete the section below.)

I, Kathryn S. Augustsin, hereby swear that I could not personally hand a copy of this Temporary Protective Order of Restraint to the other parent, so I mailed a true, exact and full copy of it to him/her as follows:

DATE MAILED: 8/27/92 TIME: 2:16 p.m.

MAILED AT: Portland, Oregon
(City, State)

I mailed it to the other parent's last known mailing address, which is:

RFD #3, Box 5540
Street

Winslow, Maine 04901
City State Zip

Signed: Kathryn S. Augustsin
(Sign only before a Notary Public)

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 1992.

_____
NOTARY PUBLIC FOR OREGON
My commission expires: ____

IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

| | | |
|---|---|---|
| In the Matter of the Marriage of: | ) | No. 9208-66808 |
| MARGARET S. ROWLAND, Petitioner, | ) | JUDGMENT ON THE PLEADINGS |
| and | ) | |
| ROBERT E. KINGMAN, Respondent. | ) | |

Alleged contemnors Susana Alba and the firm of Hoevet, Snyder & Miller's Motion for Judgment on the Pleadings came before this court for hearing on or about March 3,1 993. Petitioner's counsel, Carl Neil, of attorneys for petitioner, was present; respondent's counsel, Beth Mason, of attorneys for respondent, was present, together with alleged contemnor Susana Alba. The court

considered all of the pleadings in the file, together with all attached exhibits, memorandums of law filed on behalf of all interested parties, and oral argument by counsel on behalf of petitioner and the alleged contemnors Susana Alba and the firm of Hoevet, Snyder & Miller, and the court being fully advised;

THE COURT FINDS:

1. Oregon has adopted the Uniform Child Custody and Jurisdiction Act, ORS 109.700 et seq, and recognizes that the Parental Kidnapping Prevention Act further controls the modification of custody orders from different states, involving the same children.

2. The Temporary Protective Order of Restraint entered in this matter is a "custody order" as contemplated by the Uniform

Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act.

2. The Temporary Protective Order of Restraint did not enforce the Maine Order which preceded it, but rather modified the Maine Order.

3. Pursuant to the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act, Oregon had no jurisdiction to enter the Temporary Protective Order of Restraint while Maine was actively exercising proper jurisdiction over the children of these parties.

4. The pleadings filed herein on behalf of petitioner fail to state a claim on which relief can be granted.

NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED & DECREED that alleged contemnors Susana Alba and the firm of Hoevet, Snyder

& Miller's Motion for Judgment on the Pleadings, be and hereby is allowed;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment shall enter against petitioner and in favor of the alleged contemnors Susana Alba and the firm of Hoevet, Snyder & Miller; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the alleged contemnors Susana Alba and the firm of Hoevet, Snyder & Miller are hereby awarded a judgment against petitioner as and for attorney's fees in the sum of $ 22,797.00 , and costs and disbursements as the prevailing party in the sum of $ 232.50 .

MONEY JUDGMENT

1. JUDGMENT CREDITOR: SUSAN ALBA /and/ the firm of HOEVET, SNYDER & MILLER

2. JUDGMENT CREDITOR'S ATTORNEY: BETH MASON

3. JUDGMENT DEBTOR: MARGARET S. ROWLAND

4. AMOUNT OF THE JUDGMENT: SEE BELOW

5. INTEREST OWED TO DATE OF JUDGMENT: NONE

6. POST-JUDGMENT INTEREST/ACCRUAL INFORMATION:

   (A) RATE OF INTEREST: 9%

   (B) BALANCE UPON WHICH INTEREST ACCRUES: UNPAID BALANCE

   (C) DATE FROM WHICH INTEREST RUNS:

   (D) INTEREST TYPE: SIMPLE ANNUAL

7. JUDGMENT AWARDS:

   (A) COSTS/DISBURSEMENTS: $ 232.50

   (B) ATTORNEYS FEES: $ 22,797.00

DATED this 8 day of June, 1993.

/s/
JUDGE STEPHEN B. HERRELL

Submitted by:
BETH MASON OSB#77269
Of Attorneys for alleged
contemnors Susan Alba and
the firm of Hoevet, Snyder
& Miller

LEWIS & CLARK
NORTHWESTERN SCHOOL OF LAW

Aug 29

Dear Judge Beaudoin--

The original of this went surface mail yesterday and so may be delayed. I am sending this ahead in the hope that it may be helpful on Monday.

On the original, I noted that as of Friday at 7:00 PM, according to Doctor Rowland's minister, Mr. Kingman still did not have a residence in Yarmouth, as required by your order. The address of 160A Main Street was unfurnished, being a two level apartment, partly over a garage, opposite a hardware store.

You have my best wishes on this case. Monday, I will be resuming my school and

court responsibilities here in Oregon, but my thoughts will be with you.

Art LaFrance

**19 M.R.S.A. § 752(2)**

**2. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Allocated parental rights and responsibilities" means that responsibilities for the various aspects of a child's welfare are divided between the parents, with the parent allocated a particular responsibility having the right to control that aspect of the child's welfare. Responsibilities may be divided exclusively or proportionately. Aspects of a child's welfare for which responsibility may be divided include primary physical residence,

parent-child contact, support, education, medical and dental care, religious upbringing, travel boundaries and expenses and any other aspect of parental rights and responsibilities. A parent allocated responsibility for a certain aspect of a child's welfare may be required to inform the other parent of major changes in that aspect.

***

C. "Shared parental rights and responsibilities means that most or all aspects of a child's welfare remain the joint responsibility and right of both parents, so that both parents retain equal parental rights and responsibili-

ties and both parents must confer and make joint decisions regarding the child's welfare.

**19 M.R.S.A. § 752(5)**

**5. Best interest of the child.** The court, in making an award of parental rights and responsibilities with respect to a minor child, shall apply the standard of the best interest of the child. In applying this standard, the court shall consider the following factors:

A. The age of the child;

B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;

C. The preference of the child, if old enough to express a meaningful preference;

D. The duration and adequacy of the child's current living arrangements

and the desirability of maintaining continuity;

E. The stability of any proposed living arrangements for the child;

F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;

G. The child's adjustment to the child's present home, school and community.

H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;

I. The capacity of each parent to cooperate or to learn to cooperate in child care;

J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;

K. The effect on the child if one parent has sole authority over the child's upbringing;

K-1. The existence of a history of domestic abuse between the parents; and

L. All other factors having a reasonable bearing on the physical and psychological well-being of the child.

**19 M.R.S.A. § 752(12)**

**12. Modification of orders; compulsory process.** Upon the motion of one or both of the parents, or any agency or person who has been granted parental rights and responsibilities or contact with respect to a child under this section, the court may alter its order concerning parental rights and responsibilities or contact with respect to a minor child as circumstances require. Child support orders may be modified retroactively, but only from the date that notice of a petition for modification has been served upon the opposing party pursuant to the Maine Rules of Civil Procedure. The parties shall be referred to mediation as under subsection 4.

The relocation, or intended relocation, of a child resident in this State to another

state by a parent, when the other parent is a resident in this State and there exists an award of shared or allocated parental rights and responsibilities concerning the child, is a substantial change in circumstances.

In execution of the powers given it under this Title, the court may employ any compulsory process which it deems proper, by execution attachment or other effectual form, on which costs shall be taxed as in other actions.

**O.R.S. 109.790**

109.790. Information required.

(1) Every party in a custody proceeding inn the first pleading of the party or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during the period. In this pleading or affidavit every party shall further declare under oath whether:

(a) The party has participated, as a party, witness or in any other capacity, in any other litigation concerning the custody of the same child in this or any other state;

(b) The party has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) The party knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's

jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceedings concerning the child in this or any other state of which the party obtained information during this proceeding.

# MAINE RULES OF CIVIL PROCEDURE

## RULE 65. INJUNCTIONS

**(a) Temporary Restraining Order; Notice; Hearing; Duration.** A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. The verification of such affidavit or verified complaint shall be upon

the affiant's own knowledge, information or belief; and, so far as upon information and belief, shall state that the affiant believes this information to be true. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry as the court fixes, unless within the time so fixed the order, for good cause shown is extended or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is

granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice tot he party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event eh court shall proceed to hear and determine such motion as

expeditiously as the ends of justice require.

**(b) Preliminary Injunction.**

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party. T he application for preliminary injunction may be included in the complaint or may be made by motion.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of

the record on the trial and need not be repeated upon the trial. This subdivision (b)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

**(c) Security.** No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained, provided, however, that for good cause shown and recited in the order, the court may waive the giving of security.

A surety upon a bond or undertaking under this rule submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent

upon whom any papers affecting the surety's liability ont he bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

**(d) Form and Scope of Restraining Order or Injunction.** Every restraining order and every order granting a preliminary or permanent injunction shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only

upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

**(e) Employer and Employee.** These rules do not modify any statute relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee.

**(f) Presentation to Other Justice or Judge.** When an application for an injunction or for an order or decree under this rule ins made to one justice or judge and has been acted upon by that justice or judge, it shall not be presented to any other justice or judge except by consent of

the first justice or judge which may be oral.